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OBER / KALER			PICKETT, JOHN G	
c/o Royal W. Craig				
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL TATE WOOD and BOBBY LEE WINDHAM

Appeal 2009-013767
Application 10/804,458
Technology Center 3700

Before: WILLIAM F. PATE III, JOHN C. KERINS, and
STEVEN D.A. MCCARTHY, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

- Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1-4. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The claims are directed to side-open gun case. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A gun case for storage of a long gun, comprising:

a fabric enclosure formed by a fabric outer shell sewn to a padded inner liner and reinforced around a peripheral seam, said shell and padded inner liner being folded lengthwise and sewn together at one end to form an elongate enclosure permanently closed along one side and said end, and open along a majority of another side and end and defining conjoined sidelong and end access openings, a first foldover flap movable between an open position and a closed position releasably secured over said end access opening to prevent access to the fabric enclosure, and a second continuous foldover flap movable between an open position and a closed position releasably secured over said sidelong access opening to prevent access to the fabric enclosure,

whereby when both of said first and second flaps are moved to their respective open positions to fully expose said conjoined sidelong and end access openings they allow the gun case to be quickly turned inside out for cleaning and/or drying.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Broun	US 5,431,970	Jul. 11, 1995
Jones	US 6,256,922 B1	Jul. 10, 2001
Bennett	US 2003/0106819 A1	Jun. 12, 2003

REJECTIONS

Claims 1-3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett and Jones. Ans. 3.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett, Jones, and Broun. Ans. 5.

OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellants and the Examiner. As a result of this review, we have determined that the applied prior art does not establish the *prima facie* obviousness of the claimed subject matter. Therefore the rejections on appeal are reversed. Our reasons follow.

The claimed subject matter is directed to a gun storage case having a first foldover flap secured over the end access and a second continuous foldover flap over the sidelong access opening. Bennett discloses a gun case with a first foldover flap secured over an end access. Jones is relied on to teach the second continuous foldover flap.

We are in agreement with the Appellants that Jones does not teach a single continuous foldover flap providing sidelong access. We agree with the Appellants that Jones discloses a firearm jacket with multiple flaps and openings, each separately operable to expose the trigger, cartridge, sight, and other elements of the firearm to permit operation of the gun while encased in the firearm casing. *See* col. 4, ll. 38-66; Figs 1, 2, and 7. We agree with the Appellants that the multiple flaps and access opening cannot be considered a single continuous foldover flap as the Examiner has argued. Instead longitudinal edge 270 is comprised of a series of separate flaps, some that

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fold over, and some areas that merely seal the access opening 280 formed by the edge 270.

Moreover, it is our view that the Examiner has not provided articulated reasoning with rational underpinnings as to why one of ordinary skill would modify a simple gun case such as Bennett with multiple flaps and openings as taught by Jones to permit operation of the firearm through the case of Bennett. We agree with the Appellants that the device of Bennett is for storage or transport, while the device of Jones is to provide a cover used while the firearm is operated. For these two reasons, it is our conclusion that the Examiner has not established the *prima facie* obviousness of the subject matter of claims 1-3.

With respect to the subject matter of claim 4, Broun does not ameliorate the difficulties we have had with the combination of the Bennett and Jones disclosure. Therefore, the rejection of claim 4 is also reversed.

DECISION

The Examiner's rejections of claims 1-4 under 35 U.S.C § 103(a) is reversed.

REVERSED

nlk

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